

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190863

DATE: January 4, 1978

MATTER OF: Sampson Electronics, Inc.

DIGEST:

Since protester knew on November 10, 1977, that contractor intended to subcontract 74 percent of work, protest filed on December 9, 1977, that contractor under total small business set-aside should not be permitted to subcontract to national company, is untimely and not for consideration on merits. Moreover, there is no legal basis to object to large business performing work under total small business set-aside for service contract.

Sampson Electronics, Inc. (Sampson), has protested the award of a contract to Modern Radio Company under invitation for bids (IFB) No. DAKF06-77-B-0204, issued by the United States Army Procurement Division, Fort Carson, Colorado.

The subject IFB, a total small business set-aside, was issued on September 30, 1977. Bids were opened on October 21, 1977, and by letter dated November 1, 1977, the contracting officer advised Sampson that its bid was not accepted because a lower bid was received. We have been informally advised by a representative of the Army that award was made to Modern Radio Company on November 1, 1977. Sampson's protest was filed in our Office on December 9, 1977. Sampson contends that Modern Radio is subcontracting approximately 74 percent of the contract to National Motorola Service Company and questions the propriety of permitting a small business to subcontract a majority of the work to a national company that is dominant in the field of two-way radio sales and services.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977), require that a protest must be received by either the contracting agency or the General Accounting Office

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within 10 days after the basis of protest was known or should have been known, whichever is earlier. Under these procedures, Sampson was required to file its protest within 10 days after receipt of the November 1, 1977, letter from the contracting officer which advised that its bid had been rejected.

Since Sampson's protest letter was not received until December 9, 1977, the protest is untimely and not for consideration on the merits. See F. J. Roderick & Son, Inc., B-187920, January 13, 1977, 77-1 CPD 28. Further, there is no legal basis to object to a large business performing the work under a total small business set-aside for a service contract. See Armed Services Procurement Regulation § 7-2003.2 (DPC #76-7, April 29, 1977).


Paul G. Dembling
General Counsel